

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DAVID KEITH,

Plaintiff,

v.

5:24-cv-1244 (BKS/MJK)

COLIN MAHAR and
OFFICER DRURY,

Defendants.

Appearances:

Plaintiff pro se:

David Keith
Syracuse, NY 13207

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff David Keith brought this action under 42 U.S.C. § 1983 and sought leave to proceed *in forma pauperis* (“IFP”). (Dkt. Nos. 1, 2). This matter was referred to United States Magistrate Judge Mitchell J. Katz who, on October 28, 2024, granted Plaintiff’s application to proceed IFP and issued a Report-Recommendation, recommending that Plaintiff’s complaint be dismissed, without prejudice to plaintiff filing an amended complaint asserting plausible grounds supporting equitable tolling of the statute of limitations. (Dkt. No. 5). The Court adopted the Report-Recommendation in its entirety. (Dkt. No. 6). On January 2, 2025, Plaintiff filed an amended complaint that offered an explanation as to why equitable tolling should be invoked to excuse his untimely commencement of the action. (Dkt. No. 7). Magistrate Judge Katz issued a Report-Recommendation on January 6, 2025, recommending that Plaintiff’s complaint be dismissed with prejudice and without leave to amend. (Dkt. No. 9). Magistrate Judge Katz

informed Plaintiff that he had fourteen days within which to file written objections to the report under 28 U.S.C. § 636(b)(1), and that the failure to object to the report within fourteen days would preclude appellate review. (*Id.* at 3). No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error the Court agrees that the allegations in the Amended Complaint fail to support a plausible basis to support equitable tolling. The Court therefore adopts the Report-Recommendation in its entirety.

For these reasons, it is hereby

ORDERED that Magistrate Judge Katz's Report-Recommendation (Dkt. No. 9) is **ADOPTED**; and it is further
ORDERED that Plaintiff's amended complaint (Dkt. No. 7) is **DISMISSED** in its entirety, with prejudice and without leave to amend; and it is further
ORDERED that the Clerk shall close this case; and it is further
ORDERED that the Clerk serve a copy of this Order on Plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: April 2, 2025
Syracuse, New York


Brenda K. Sannes
Chief U.S. District Judge